IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/03/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

W.P.No.7810 of 2003
and W.P.Nos. 8066, 10523, 13785, and 15015 of 2003

W.P.No.7810 of 2003

T.Kumaravelu ... Petitioner

-Vs-

1.The Chief Executive Officer/
Collector of Cuddalore District.
Cuddalore.

2.The Assistant Director of Panchyats
Cuddalore.

3.The Block Development Officer/
Commissioner, Panchayat Union
Kumaratchi, Kattumannarkoil Taluk.

4.S.Senthilkumar, President
Siragizhandanallur Panchayat
Kumaratchi Panchayat Union
Cuddalore District.

5.R.Kumar ... Respondents

W.P.No.8066/2003

R.Moorthy ... Petitioner
-Vs-

1.Inspector of Panchayat
and District Collector
Erode District.

2.The Block Development Officer
Sathyamangalam.

3.The President
Shenbagaputhoor Village Panchayat
Sathyamangalam Panchayat Union

Erode District.

4.Chinnathimma Naicker
Ward Member, Shenbagaputhoor
Village Panchayat
Sathyamangalam Panchayat Union
Erode District. ... Respondents

W.P.No.10523/2003

P.Nagaraju ... Petitioner

-Vs-

1.Inspector of Panchayat and
District Collector
Trichirappalli District
Trichirappalli.

2.A.Murugavel, President
President, Keerampur Village
Panchayat, Thuraiyur Union
Trichirappalli District.

3.K.Ezhilarasan
4th Ward Member, Keerampur
Village Panchayat, Thuraiyur
Union, Trichirappalli District. ... Respondents

W.P.No.13785 of 2003

A.Thiyagarajan ... Petitioner

-Vs-

1.The Inspector of Panchayat and
The District Collector, Karur
District.

2.V.T.Viswanathan,vice-presidents
Nerur South Panchayat
Vedichipalayam Village & Post
Karur Taluk and District. .. Respondents
W.P.No.15015 of 2003

D.Vedachalam ... Petitioner
-Vs-

1.The President

No.192, Ammanambakkam Panchayat
Thirukuzhukundram Union
Kancheepuram District.

2.The District Collector
Kancheepuram District
Kancheepuram.

3.The Branch Manager
State Bank of India
Thirukuzhukundram Union
Kancheepuram District. ... Respondents

Prayer

W.P.No.7810/2003:Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records and quash the proceedings of the 1st respondent in his proceedings Na.Ka.No.A5/151/2003 dated 21/1/2003 and consequently forbear the respondents from interfering with petitioner's functions as vice-presidentof Siragizhandanallur Panchayat, Kattumannarkoil Taluk, Cuddalore District.

W.P.8066/2003: Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records pertaining to the order of the first respondent in his proceedings No.Na.Ka.No.825/2003/A4, dated 07.02.2003 and quash the same.

W.P.No.10523/2003: Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records relating to the proceedings of the 1st respondent made in Na.Ka.Aa.3/1345/2002 dated 18.3.2003 and quash the same.

W.P.No.13785/2003: Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records relating to the order passed by the first respondent in his proceedings Na.Ka.No.Aa2/5/2003 dated 16.4.2003 and quash the same.

W.P.No.15015/2003: Petition under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus forbearing the 3rd respondent from disbursing any amount of money in the 192, Ammanampakkam Panchayat account in VP 10, 11,4 40, 41 and 44 being operated 3rd respondent bank except with signature of designated President and vice-presidentof the 192, Ammanampakkam Panchayat union, Thirukuzhukundram Union, Kancheepuram District.

!For Petitioners : Mr.D.Baskar (In W.P.No.7810)
Mr.S.Kamadevan (In W.P.No.8066)
Mr.S.Doraiswamy (In W.P.No.10523)

Mr.B.Saravanan (In W.P.No.13785)
Dr.G.Krishnamurthy (In W.P.15015)

^For Respondents : Mr.V.Subbarayan
Special Government Pleader
(For RR 1 to 4 in W.P.7810, for RR
1 to 3 in W.P.8066, for RR 1&2 in
W.P.10523, for Respondents in
W.P.13785, and
for R1 in W.P.No.
15015/2003)
: Mr.S.Silambanan for R4 in W.P.8066
: No appearance For R5 in W.P.7810,
R3 in W.P.10523 and R3 in W.P.15015

:C O M M O N O R D E R

The petitioners in all these writ petitions are the vice-presidents of the respective Village Panchayats.

2. Aggrieved by the resolution of the respective village panchayats, authorising the ward member of the respective panchayats to sign the cheques for the payment from the Village Panchayat Fund and other funds , on the ground that the petitioners/vice-presidents were refusing to sign the cheques, the present writ petitions are filed.

3. The petitioners assail the respective resolutions of the village panchayats on the following grounds.

(i) As the impugned resolutions deprive their rights from signing the cheques, by authorising the President and other ward members to sign the cheques for payment from the Village Panchayat Fund and other funds, the same are arbitrary, unreasonable and contrary to the provisions of the Tamil Nadu Panchayat Act, 1994 (hereinafter referred to as the 'Act')

(ii) The right of signing of cheques for payment from the Village Panchayat Fund and other funds, being a statutory right conferred on the vice-president under Section 188(2) of the Act, shall not be deprived by way of a resolution made under Section 188(3) of the Act, unless otherwise the same is warranted under very limited circumstances viz., in the absence of the President or vice-presidents, as the case may be.

(iii) Even in a case where it is alleged that the vice-presidents are not co-operative or are refusing to sign the cheques as placed before the Panchayat, Section 188(3) is not attracted, as, such refusal only amounts to a omission or refusal to carry out or disobey any provisions of the Act, falling within the purview of Section 206 of the Act, which empowers the Inspector of

Panchayats to remove the vicepresidents, which in turn requires such vice-presidents to offer their explanation within a specified time, and

(iv) In any event, the petitioners are entitled for an opportunity to submit their explanation for the inaction or refusal to sign the cheques for payment from the Village Panchayat Fund and other fundsbefore their right to operate the funds of the village panchayat is taken away.

4.1. Per contra, Mr.V.Subbarayan, learned Special Government Pleader, appearing on behalf of the Inspector of Panchayats as well as the Presidents of the respective village panchayats and the newly authorised ward members of the village panchayat, of course placing reliance of a decision of this Court dated 14.10.2003 in W.P.No.8686 of 2003, submits that the impugned resolutions of the panchayats, authorising the President and another ward member o f the village panchayat to sign the cheques for payment from the Village Panchayat Fund and other funds, is sustainable in view of Section 188(3) of the Act, whereunder the Village Panchayat is provided with general control of the affairs of the panchayat and to maintain the day to day administration of the panchayat, without paralysing the same for want of issue of cheques.

4.2. It is further contended that the power conferred under Section 206 of the Act is intended only for the removal of the vicepresident, who wilfully omits or disobeys to carry out any provisions of the Act or any lawful orders made or issued under the Act. In other words, when a specific provision is provided under the Act viz., Section 188(3) to govern the situation of operating the Village Panchayat Fund and other funds and issuing the cheques for payment, only such powers should have been resorted to.

4.3. It is therefore contended that in order to maintain the smooth administration of the village panchayat, and particularly when the petitioners/vice-presidents were not cooperating, by refusing to sign the cheques, the panchayats are absolutely within their jurisdiction to take appropriate decision by way of a resolution, authorising the President and another ward member of the village panchayat to sign the cheques.

5. Mr.V.Subbarayan, learned Special Government Pleader also invited my attention to the G.O.Ms.No.92, Rural Development (C.III) Department, dated 26.3.1997, to strengthen his argument, whereunder the Village Panchayat, by a resolution may authorise any member other than the vice-presidents, to jointly operate the accounts along with the President, as recommended in the report by the committee constituted for rationalisation of the village panchayat accounts, which came into effect from 1.4.1997.

6. I have given careful consideration to the submissions of the learned counsel on both sides.

7. The Tamil Nadu Panchayat Act, 1994 is intended to establish a three-tier panchayat raj system in the State to the elected bodies at the village, intermediate and district level in keeping with the Constitution

(Seventy-third Amendment) Act, 1992, relating to panchayats for greater participation of the people so as to make them institutions of self-government and for more effective implementation of rural development programmes. It is, therefore, clear that every elected member has their own role to play within the purview of the statute and their participation in the affairs of the panchayat cannot be lightly interfered in any manner unknown to the statute.

8. The issue raised for consideration in this batch of writ petitions is, if and when the President or vice-president, as the case may be, refuse to sign the cheques of the Village Panchayat Fund and other funds constituted under Section 188(2) of the Act, what could be the alternative for the panchayat to operate the funds and action to be taken against the President/Vice President in that connection?

9. In this regard, I am obliged to refer to Section 188(3), 203 and Section 206 of the Act, which deals with the rights of the vicepresident and their removal.

Sec.188(3): Subject to general control as the village panchayat may exercise from time to time, all cheques for payment from Village Panchayat Fund and other funds or other funds constituted under subsection (2) shall be signed jointly by the president and vice-president, as the case may be, by the vice-president or the president and another member authorised by the village panchayat at a meeting in this behalf.

Section 203: Emergency powers of Collector and Inspector: Subject to such control as may be prescribed, the Inspector or the Collector, may, in cases of emergency, direct or provide for the execution of any work, or the doing of any act, which the Panchayat or Executive authority or Commissioner or (Secretary) is empowered to execute or do and the immediate execution or doing of which is in his opinion necessary for the safety of the public and may direct that the expense of executing such work or doing such act shall be paid by the person having the custody of the Village Panchayat fund or the Panchayat Union (General) fund or the District Panchayat (General) Fund in priority to any other charges against such fund except charges for the service of authorised loans.

Section 206: Removal of vice-president: (1) If in the opinion of the Inspector, the vice-president wilfully omits or refuses to carry out or disobeys any provisions of this Act, or any rule, by-law, regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall by notice in writing, require the vice-president to offer within a specified date, his explanation with respect to his cases of omission or commission mentioned in the notice.

(2) The provisions of sub-sections (2) to (13) (both inclusive) of section 205 shall, as far as may be, apply in relation to the removal of the vice-president as they apply in relation to the removal of the president by the Inspector on his own motion.

10. A reference to G.O.Ms.No.92, Rural Development (C.III) Department, dated 26.3.1997, which was drawn to my attention by Mr.V. Subbarayan is also relevant to be referred to here, which reads as follows.

GOVERNMENT OF TAMIL NADU
ABSTRACT

Local Bodies-Revising the existing accounting procedure in the context of formation of three tier Panchayat Administration-Constitution of Committee-Report on rationalisation of Village Panchayat AccountsOrders-Issued.

RURAL DEVELOPMENT (C.III) DEPARTMENT
G.O.Ms.No.92 Dated : 26.3.1997'

1.D.O.Letter No.35131/C3/96, dt.20.9.96
2.From the Director of Rural Development, Chennai-15, D.O.Lr.No.80412/PCA-1/96, dated 11.3.1997.

ORDER:

In pursuance of Government directions, to set up a Committee to revise the existing accounting procedures of Panchayat and Panchayat Union level and to suggest the accounting procedure for District Panchayat level, the Director of Rural Development has constituted a committee to suggest revision of existing accounting procedure of Village panchayat, Panchayat Union and District Panchayats in the context of three tier system of rural local bodies formed after the recent Panchayat Elections. The committee, after detailed discussions and consultations with both officials and non-officials, has finalized its report on the "Rationalisation of Village Panchayat Accounts" along with a set of thirty one Village Panchayat Forms, to be maintained at the Village Panchayat Forms, to be maintained at the Village Panchayat Office.

2. The Government after careful consideration have decided to accept the above said report of the Committee. The accounting procedure in Annexure 1, and the Village Panchayat Accounting forms in Annexure 2 will come into effect from 1.4.97.

3. This Government Order will supersede all existing Government Orders in regard to Village Panchayat Accounting Procedures. Orders regarding technical supervision, preparation of estimates, calling for tenders, wherever necessary, check measurement etc will remain in force.

4. The orders regarding rationalisation of Panchayat Union accounts and accounting procedure for newly formed District Panchayat will to issued separately.

5. This orders issues with the concurrence of the Finance Department Vide its U.O.No.247/ADS/(TP)/97, dated 25.3.1997.

(BY ORDER OF THE GOVERNOR)

S.NARAYAN
Secretary to
Government

// TRUE COPY //

ANNEXURE-I

New System of Accounts

It has now become necessary to delink the accounts of the Panchayat Unions and Village Panchayats.

To permit the Village panchayats to operate their funds independently subject to inspections and audit.

To do away with the pre-scrutiny by the E.O.(P) and the P.U.C. Of each and every bill of the Village Panchayats before making payment.

To permit the taxes, fees etc., that are collected to be remitted into a local bank account in the name of the village panchayat instead of the P.U.treasury.

And to provide for the direct adjustment of the grants and assigned revenues to Village Panchayats without routing the same through Panchayat Union accounts.

Under the revised system of maintenance of Village Panchayat accounts now proposed, each Village Panchayat will have 3 bank accounts:-
1.Village Panchayat Fund Account
2.Village Panchayat Earmarket Grants Account
3.Village Panchayat Scheme Fund Account.

These Accounts may be permitted to be opened in a branch of
- any cooperative bank
- any branch of Regional Rural Banks
- Post Office Savings Bank
- Nationalised Bank

in the above order of priority, depending upon the convenience of the

Village Panchayat, either in the same village or in the nearby village. There should be a separate cash book for each of these 3 accounts. Monthly reconciliation of the closing balances as per these 3 cash books, and as per the 3 pass books should be done systematically by the President. All the accounts should be jointly operated by the President and the Vice President. In exceptional cases, where there is adversarial relationship between the President and the Vice President, the Panchayat, may by a resolution authorise any other member other than the Vice President to jointly operate the account along with the President.

Provided that prior approval of the Inspector of Panchayats (District Collector) will be obtained for this.

11. It is no doubt true that paragraph 2 of the above Government Order, accepting the report of the committee for rationalisation of the Village Panchayat accounts, which came into effect from 1.4.1997, read with annexure-1, paragraph 2, provides that, "All the accounts should be jointly operated by the President and the Vice President. In exceptional cases, where there is adversarial relationship between the President and the Vice President, the Panchayat, may by a resolution authorise any other member other than the Vice President to jointly operate the account along with the President."

12. It is also true, as pointed out by Mr.V.Subbarayan, learned Special Government Pleader, that this Court by a decision dated 14.10.200 3 in W.P.No.8686 of 2003, upheld similar resolutions of the Panchayat, treating the same having passed under Section 188(3) of the Act referred to above. The relevant portion of the said order dated 14.10.20 03 made in W.P.No.8686 of 2003 reads as follows,

" 2. Learned counsel for the petitioner submitted that so long as the petitioner is the Vice-President of the said Panchayat, she is entitled to sign in the cheques as contemplated under Sec.188(3) of the Tamil Nadu Panchayats Act, 1994.

3. I am not able to accept the said submission. Even according to the said provision, the power of the President and the Vice President to sign in the cheque is only subject to such general control as the village panchayat may exercise from time to time. In this case, the village panchayat passed a resolution requesti ng the 1st respondent Collector to pass an order permtiting one S.Palaniandi, the second ward member of the said panchayat, instead of the Vice President, the petitioner. The collector has passed the impugned order on the basis of the said resolution, which is in compliance with Sec.188(3) of the said Act. Since the said order of the Collector is in accordance with the said provision, I am not inclined to interfere with the impugned order."

13. Since there is no finding in the above order dated 14.10.2003 that the resolution impugned therein was passed due to the absence of the vice-president or otherwise, or due to the omission or refusal of the vice-president to discharge his duties, I am unable to apply the ratio

thereunder to the facts of this case, as in the instant case, concededly the impugned resolution came to be passed invoking Section 188(3) of the Act, but with a specific allegation that the petitioners/vice-presidents are not cooperating and thereby refusing to sign the cheques for payment from the village panchayat fund and other funds.

14. A careful reading of Section 188(3) would go to show that the power of the village panchayat to pass appropriate resolution, authorising the President and another ward member of the panchayat to sign the cheques, would be resorted to only where the vice-president was absent, but not in a case where the vice-president omits or refuses to discharge his duties, as in the instant case. In which event, such omission or refusal to carry out the obligation to sign the cheques, would only attract Section 206 of the Act, warranting even an extreme consequence of removal of the vice-president but it cannot be interfered with lightly through a resolution by majority, which would otherwise be a violation of the very spirit and object of the legislation. Once such an omission and refusal to sign the cheque by the vicepresident is brought to the notice of the Inspector of Panchayats, he is empowered under the statute to seek an explanation from the vicepresident and to proceed in accordance with law. If the explanation is genuine and bonafide, namely that the vice-president refuses to sign the cheque only to protect the interest of the village panchayat fund the Inspector of panchayats may drop further action; on the other hand, if the explanation is not satisfactory, the Inspector of Panchayats can take further action for removal of the vice president as contemplated under Section 206 of the Act, in which event the Inspector of Panchayats, by resorting to the emergency power contemplated under Section 203 of the Act, can give appropriate permission to the village panchayat to proceed further in the matter, taking note of the situation and general condition warranted, and to exercise a general control by the panchayat over the affairs of the panchayat in order to maintain normal administration of the day to day affairs of the panchayat.

15. The recommendations of the committee constituted for rationalisation of the village panchayat accounts, which was accepted in G.O.Ms.No.92, Rural Development (C.III) Department, dated 26.3.1997, is also in tune with the principles laid down in Section 206 of the Act. Even though the said Government Order empowers the panchayat to authorise the president and another ward member, such a resolution could be passed only with the prior approval of the Inspector of Panchayats, obtained in this regard, as provided in the government order dated 26 .3.1997, which means that no resolution could be passed without the prior approval of the Inspector of Panchayats. Hence, the statute contemplates that if the vice-president refuses to sign the cheque for the operation of the village panchayat fund, it is obligatory on the part of the president to seek the prior approval or permission from the Inspector of Panchayats to proceed with the matter. In such event, the Inspector, either exercising the powers conferred under Section 206 of the Act, seek an explanation from the vice-president as to the refusal to sign the cheques, or alternately exercise the emergency powers vested on him under Section 203 of the Act referred to above, and pass appropriate directions as temporary arrangement, in order to maintain the day to day affairs of the panchayat.

But, in no case the president can pass any resolution without the prior approval of the Inspector of Panchayats. Reading Sections 188(3), 203 and 206 of the Act harmoniously, makes it clear that once prior approval or permission to take action against the Vice President, who refuses to sign the cheque, is sought for, a duty is cast on the Inspector of Panchayats to seek an explanation from the vice-president and pass appropriate orders. Therefore, the Inspector of Panchayats, before proceeding further on the allegation of refusal to sign the cheque against the vice-president, has to read the procedure contemplated under Section 20 6(1) of the Act, into the procedure provided under Section 188(3), before giving effect to any such resolution. Pending such action, the Inspector of Panchayats is at liberty to invoke emergency powers conferred Section 203 of the Act.

16. It is trite law that if a statute has conferred on a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits doing the act in any other manner than what has been prescribed (vide Taylor -vs- Taylor reported in 18 76 1 Ch D 426) and, therefore, applying the above rule of interpretation and with reference to the procedure provided under Sections 188(3), 203 and 206 of the Act, in the case where the vice president refuses to sign the cheque, I have no hesitation to hold that the impugned proceedings are liable to be quashed and the same are quashed. The issue is answered accordingly.

17. In the result, the writ appeal is allowed. No costs.

Index: Yes
Website: Yes

KST.

To

1.The Chief Executive Officer/
Collector of Cuddalore District.
Cuddalore.

2.The Assistant Director of Panchyats
Cuddalore.

3.The Block Development Officer/
Commissioner, Panchayat Union
Kumaratchi, Kattumannarkoil Taluk.

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Trichirappalli.

6.The Inspector of Panchayat and
The District Collector, Karur District.

7.The District Collector
Kancheepuram District
Kancheepuram.